

Huge Win for Online Journalists' Source Protection

EFF Arguments Secure Reporters' Privilege for Internet News Gatherers

San Jose - A California state appeals court ruled in favor of the Electronic Frontier Foundation's (EFF's) petition on behalf of three online journalists Friday, holding that the online journalists have the same right to protect the confidentiality of their sources as offline reporters do.

"Today's decision is a victory for the rights of journalists, whether online or offline, and for the public at large," said EFF Staff Attorney Kurt Opsahl, who argued the case before the appeals court last month. "The court has upheld the strong protections for the free flow of information to the press, and from the press to the public."

In their decision, the judges wrote: "We can think of no workable test or principle that would distinguish 'legitimate' from 'illegitimate' news. Any attempt by courts to draw such a distinction would imperil a fundamental purpose of the First Amendment, which is to identify the best, most important, and most valuable ideas not by any sociological or economic formula, rule of law, or process of government, but through the rough and tumble competition of the memetic marketplace."

The case began when Apple Computer sued several unnamed individuals, called "Does," who allegedly leaked information about an upcoming product to online news sites PowerPage and AppleInsider. As part of its investigation, Apple subpoenaed Nfox -- PowerPage's email service provider -- for communications and unpublished materials obtained by PowerPage publisher Jason O'Grady. A trial court upheld the subpoena.

But Friday, the court said that O'Grady is protected by California's reporter's shield law, as well as the constitutional privilege against disclosure of confidential sources. The court also agreed with EFF that Apple's subpoena to email service provider Nfox was unenforceable because it violated the federal Stored Communications Act, which requires direct subpoenas of account holders.

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"In addition to being a free speech victory for every citizen reporter who uses the Internet to distribute news, today's decision is a profound electronic privacy victory for everyone who uses email," said EFF Staff Attorney Kevin Bankston. "The court correctly found that under federal law, civil litigants can't subpoena your stored email from your service provider."

EFF worked with co-counsel Thomas Moore III and Richard Wiebe in this case.

* I was against this decision, because I thought the bloggers were reporting information illegally obtained and therefore "unreportable" due to the Uniform Trade Secret Act (UTSA)

However, the court afforded these bloggers the same rights. My site has been on the internet for 3 years longer than one of the defendant's blogs!